

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
December 2, 2008 Session

IN RE: THOMAS R. HUTCHESON

**Appeal from the Chancery Court for Hamilton County
No. 07-G-020 W. Frank Brown, III, Chancellor**

No. E2008-00737-COA-R3-CV - FILED APRIL 13, 2009

Betty Rewcastle Hutcheson; Katherine Grosvenor Hutcheson; James Eric Hutcheson, John L. Hutcheson, IV; and Marion Housch Hutcheson, II (“Petitioners”) filed suit seeking appointment of a conservator for Thomas R. Hutcheson (“Respondent”). After a trial, the Trial Court entered an order finding and holding, *inter alia*, that clear and convincing evidence existed that Respondent was a disabled person under Tenn. Code Ann. § 34-1-101, *et seq.* and § 34-3-101, *et seq.* and that Respondent needs assistance of the court under Tenn. Code Ann. § 34-1-126. The Trial Court appointed both a conservator of the person of Respondent and a conservator of the property of Respondent. Respondent appeals to this Court. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed;
Case Remanded**

D. MICHAEL SWINEY, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Selma Cash Paty and Pamela O’Dwyer, Chattanooga, Tennessee for the Appellant, Thomas R. Hutcheson.

Harold L. North, Jr., and Theresa L. Critchfield, Chattanooga, Tennessee for the Appellees, Betty Rewcastle Hutcheson; Katherine Grosvenor Hutcheson; James Eric Hutcheson; John L. Hutcheson, IV; and Marion Housch Hutcheson, II.

OPINION

Background

Respondent is a former investment advisor with an extensive history of alcohol and drug abuse. In January of 2007, Respondent's estranged wife, mother, two brothers, and an aunt filed a Petition for Appointment of Conservator in the Chancery Court of Hamilton County, Tennessee. The case was tried in December of 2007. At the time of trial, Respondent was forty-three years old.

Terry Holmes, M.D., a psychiatrist who performed a court-ordered medical evaluation of Respondent, testified at trial. Dr. Holmes is the clinical director of Moccasin Bend. Dr. Holmes testified that Moccasin Bend is asked to evaluate approximately 300 patients a month and roughly two-thirds of those patients have alcohol and drug issues as the primary diagnosis. Dr. Holmes testified that he deals with drug and alcohol dependent individuals who are psychotic "[q]uite frequently."

When asked, Dr. Holmes opined that there is clear evidence that Respondent is disabled or incapacitated and warrants a conservator of the person and property. In reaching this opinion, Dr. Holmes conducted a one and a half hour interview with Respondent in February of 2007. In addition to the interview with Respondent, Dr. Holmes spent four hours reviewing the prescription drugs which Respondent was using at the time, analyzed recorded telephone conversations of Respondent's, and reviewed Respondent's medical records from Memorial and Hazelden.

Dr. Holmes' written report was admitted into evidence at trial. In his report, Dr. Holmes noted that Respondent's chief complaints were his status as an alcoholic and drug user, and his affair with another woman. Dr. Holmes opined that due to his narcissistically oriented character, Respondent blames others for his problems.

During his evaluation with Dr. Holmes, Respondent denied psychotic episodes. However, Dr. Holmes noted that Respondent shifted subjects quickly and when asked what the impact of this was, Dr. Holmes testified:

Well, it suggested strongly that there was an element of disorganization in his thinking. That is to say, his goal-directedness of speech was somewhat impaired. It leads one to begin to think about one of the manifestations of psychosis, which is, in fact, disorganization - - hallucinations, delusions, and disorganizations. So the latter is actually considered to be evidence for a formal thought disorder which would be some evidence to suggest that he had some, some psychotic impairments.

Dr. Holmes also noted that Respondent was in "a lot of subjective distress" when I evaluated him. Dr. Holmes attributed this distress to Respondent's use of the antipsychotic medication, Geodon, which was causing akathisia, a subjective sense of restlessness.

Dr. Holmes noted that Respondent believes that his family wants to control him. Dr. Holmes testified:

that's some evidence for his feeling that he was being persecuted and whether that feeling of persecution rose to the level of psychotic proportions, I was beginning to get the idea at that point that we were looking at - - or I was looking, rather, at someone who did feel persecuted to the point that that was crossing the diagnostic threshold to - - toward paranoia.

Dr. Holmes testified:

It became increasingly clear that there was substantial evidence to indicate, based on not only the history, but on his presentation, that there were - - there was evidence for a formal thought disorder and there was clear and convincing evidence of past psychotic episodes.

When asked what psychosis means, Dr. Holmes testified:

Well, taken from the Diagnostic and Statistical Manual of Mental Disorders, and I realize there may be an objection for this from the standpoint - - ... - - that theoretical objection notwithstanding, it's still the, as close as we have to a gold standard for psychiatric diagnoses. Criteria for schizophrenia talks about those features which constitute psychosis, and they are hallucinations, which is a perceptual disturbance, seeing things, hearing things, feeling things, tasting things that other people can't. Usually they're distortions of something real in the environment. If you see a shadow in the corner, that might be an imposing demon of some kind.

The second part is the delusional issue. Delusions can be either bizarre or nonbizarre and in his case, they're not particularly bizarre, thinking family's out to get him, for example. And those nonbizarre delusions are a little harder to, to deal with from the standpoint of medication and therapy.

The third part is disorganization. I believe I've spoken about that earlier wherein a person loses their goal-directedness of thought. They talk in a circumstantial manner, they talk in a tangential manner, meaning that they will start off, and there's a goal in sight, but they lose track of the goal and never get there. People who lose their train of thought is called thought-blocking, and there are other more exotic indicators of a formal thought disorder, but those are the basics.

And last criteria, he talks about negative symptoms to involve things like lack of motivation, lack of interpersonal relatedness, and lack of appropriate expression of affect. I didn't note any of the latter issues as negative symptoms with [Respondent], but I did notice some of the significant elements to suggest a formal

thought disorder and I was beginning to wonder, very strongly, well, quite strongly as a matter of fact, that he was still - - he was psychotic from the standpoint of persecutory ideas.

Delusion not necessarily is, is a falsely held belief. I mean, you may be delusional about something that's true. It's what you do about it is what's, what's important.

When asked what evidence he saw with regard to impairment in planning and sequencing of events as noted in his report, Dr. Holmes testified:

From the nature of his story that he was telling me, the ability to plan a sequence of events is a, is a - - is what's called executive function in terms of your ability to think, reason, and concentrate. People lose their ability to plan a sequence of events when they have cognitive deficits, and when they have, in particular, formal thought disorders and in particular when they have the dementic process.

I noticed some impairment in terms of [Respondent's] historical ability to plan ahead for events. He was - - it seemed to be driven simply by the emotion du jour, which you translate directly into action, which was usually destructive, particularly when he was under the influence of alcohol and drugs....[M]any people, when they are contemplating an action, they will weigh the pros and cons. Some people with cognitive impairments are unable to do that. It's kind of like the little angel on one shoulder and the little devil on the other shoulder. It goes back and forth. For some people, those little external reminders sort of do not exist. People just do what they want without thinking, in other words.... Well, when you have any mental disturbance, the first two things that go are insight and judgment. Clearly his insight was defective from the standpoint that he couldn't see himself the way that other people were seeing him. He saw the world as, as sort of out to persecute him and he says about his family they're simply out to separate me from my money.

Dr. Holmes testified that Respondent's multiple hospitalizations to detox:

tells me a couple of things. It tells me that, number one, he's an individual that's particularly vulnerable to withdrawal. It also suggests strongly that he - - his intake of alcohol is extremely high. It also suggests that based on the number of times that he's been in, that he just didn't get it in terms of the fact that this could potentially kill him, and that he's driven back to alcohol and drugs in spite of what most people would feel would be a horrific event which they would never want to re-experience.

Dr. Holmes found Respondent's personality style to fall into the antisocial, borderline narcissistic histrionic cluster. Dr. Holmes testified that Respondent's efforts to deal with his addiction "have been futile." Dr. Holmes further testified that Respondent was "a reasonably bright

guy,” and when asked, testified that a reasonably bright person could “seal over and not show you any evidence of psychosis on a particular day or even a particular series of days.”

Dr. Holmes testified:

[I]n terms of differential diagnosis, because there may be questions here, why would Dr. Gregory, for example, talk about a psychotic disorder not otherwise specified and why would Dr. Holmes, given the same historical material and presumably near the same mental status examination, come up with a different diagnosis.

Well, the fact is it is a judgment call. If I can say - - and my professional opinion I believe I can - - that his psychotic disorder was due to cocaine, then that's the way you go. If you're not sure what caused the psychosis and it doesn't conform, according to the rule book, to other major diagnostic entities like schizophrenia, schizo-affective disorder, bipolar disorder with psychotic features, and intermittent psychotic, brief psychotic disorder and others, an NOS diagnosis, not otherwise specified, kind of a trash can diagnosis in a way. You get to hedge your bet that way and say I can't say, I'm not quite sure that it's cocaine. I think so, but I really don't want to say or can't say, so that's how you code it.

But clearly, there was overwhelming evidence that psychotic episodes, at least one, probably more than that, had occurred and this is the best way to explain it, but once again, in my view.

Dr. Holmes testified that “[n]ot everything that drives paranoia or hallucinations is derived of a mental illness like schizophrenia...,” but that “[m]any times hallucinations, delusions are organically driven...” by acute intoxications from cocaine or methamphetamine. When asked, Dr. Holmes stated that even if Respondent quit using cocaine, his problems would “[i]n all likelihood not [go away].” Dr. Holmes explained:

What that means is if you use cocaine for long enough and you're given the genetic vulnerability, some people will become psychotic and even in the absence of reexposure will not reconstitute and all of their psychotic issues vanish. Certainly not all of your characterological issues are going to vanish either.

Dr. Holmes testified:

[Respondent's] prognosis is very guarded at this point and his family is indeed, in my humble view, quite correct to be very concerned about, about [Respondent] in essence killing himself with ongoing, particularly alcohol and drug - - alcohol problems, but the cocaine can get him, too....Well, I think his characterological issues, that is to say, his personality, his approach to life, his expectation for how things are going to go, continues to deteriorate to a degree. His ongoing issues with

alcohol and drugs, at this point in the trajectory in his life, will always be the source of ongoing concern on a day-to-day, hour-to-hour, minute-to-minute basis.

In terms of his cognitive deficits, I've already told the Court that I'm concerned that if he continues on, he will be frankly demented within a year or two, three, not to mention the physical stuff. I have evidence in some of the documents tendered to me that he's presented to Memorial with blood alcohol levels in excess of 330, which is the lethal dose of maybe 10 percent of the population. LD-50 is about 450. So there's some people who would not be able to survive the kind of alcohol intoxications that [Respondent] has subjected himself to.

The effect that that has on multiple organ systems, not just the brain, is, is real and ongoing. In terms of his psychotic process, let me go through that again. The more exposure he gets to alcohol and cocaine, the higher the likelihood that he will remain permanently psychotic with an accelerating dementia. This is not a pretty picture.

According to Dr. Holmes, Respondent's prognosis over five years is "terrible." Dr. Holmes testified:

The evidence is overwhelming that he has been grossly psychotic in the past. The evidence for paranoid delusions with persecutory themes is beyond doubt. He's had visual hallucinations.... I am satisfied that his psychotic episodes are derived as a direct function of his malignant alcohol and drug dependencies, and I talk about my difference, which is only a very academic one, from Dr. Gregory who attended him at Valley Hospital for his psychotic episode there.... If you look at [Respondent's] life most of the time, clearly when he's intoxicated, clearly when he's psychotic, he lacks capacity to care for himself, and that's a lot of the time. Were he to stay sober, he might regain the capacity needed to manage his life and his considerable assets. Might. Unfortunately that likelihood is remote in the absence of external control. [Respondent] is characterologically and genetically vulnerable to ongoing and unremitting problems related to addiction.... The best predictor of future behavior is past behavior. I mean it's episode after episode after episode. Even following his evaluation with me, he's been seen at Memorial Hospital, grossly psychotic and quite frankly very physically impaired. He was reported to be quite yellow from liver damage due to alcohol, and his drug screens have remained positive for cocaine on at least one occasion that I can think of.

Dr. Holmes reviewed transcripts of telephone conversations of Respondent's and testified:

[Respondent] had this delusion that he has repeatedly been rendered unconscious and up to 600 people raped him. He's had a computer chip implanted in him. People

were tampering with his computers, all sorts of conspiratorial themes, in other words, but the music is the same. It's psychotic, delusional material, clear in its - - it's classified as bizarre.

With regard to the delusions, Dr. Holmes testified:

that the magnitude of [Respondent's] delusional thinking is - - waxes and wanes, but the pattern is that it's usually there if you look for it, at least from my review of the records. It's got [sic] going away any time soon. The question is whether each episode of psychosis is individually driven by exposure to alcohol and particularly drugs like cocaine, but whether we now are looking at a persistent psychotic disorder. My professional opinion is that we're looking at the latter.

Even if we look at the former and each episode of psychosis is individually driven by exposure to alcohol and cocaine, there's a lot of them, a lot of them.

Fielding Atchley, Jr., an attorney appointed by the Trial Court to serve as Respondent's guardian ad litem, testified at trial. Mr. Atchley reviewed Respondent's finances and some of his medical records, interviewed Respondent, and spoke with several members of Respondent's family by telephone.

Mr. Atchley determined that two or three times a week, cash withdrawals of \$500 were being made from Respondent's accounts and Mr. Atchley stated "that to me was very consistent with someone who would be buying drugs for consumption." Mr. Atchley found no proof of unauthorized ATM withdrawals from Respondent's accounts.

Mr. Atchley testified that Respondent reported that people were breaking into his apartment and "they were coming through a metal door which was over the bathtub, and that they were putting things on his computer." Mr. Atchley also testified that Respondent:

did admit to me that there was some sort of guns set up to somehow, to be used on the intruders I think into that apartment in St. John's. There was some factual issues exactly how all that was set up, but I got enough record from him that I knew there had been some use of guns in regard to the intruders.

Further, Mr. Atchley testified that "[Respondent] said he was - - that [Respondent] was hearing voices that he needed to hurt his children."

Mr. Atchley testified:

I felt there was an indication that a conservator was indicated. [Respondent] clearly had a substance abuse - - ongoing substance abuse problem and a long history of

substance abuse, and it had even been to a point that he had to discontinue his, his investment counselor job with Brooks Montague, so I think I was of the opinion that it was substantially interfering with his life.

I also felt that there was some substance to the concern about mental health issues, that he had to be admitted initially in Valley Psychiatric because he was having some, what was diagnosed as delusions at that point, though they felt like those delusions had been resolved and stabilized upon his discharge from that hospital, and I felt like he needed - - that these combined was a basis under our statute for disability for the appointment of a conservator to help him with long-term substance abuse care as well as to explore the underlying mental health issues and as well to, quite frankly, get control of his money if, if that needed to be controlled to be available for the buying of illegal drugs.

Katie Hutcheson, Respondent's wife, testified that she and Respondent were married in 1996, and have two minor children together. Ms. Hutcheson and Respondent were separated at the time of trial. When Ms. Hutcheson and Respondent met in 1992, Respondent had been sober for one year. Respondent remained sober for years. However, Respondent began abusing prescribed pain medication in 2004. Because of Respondent's substance abuse, he and Ms. Hutcheson separated in 2005.

Ms. Hutcheson testified that in December of 2006:

[Respondent] called me and he told me that he had heard Sherral's voice, meaning Sherral Parris [a woman that Respondent had an affair with], and she had told him that they were going to kill our children. He then told me that he heard lots of voices, that he heard Sherral's voice, that he heard a voice that sounded like Ricky's. I believe he meant Ricky Moore who had worked with him at Brooks Montague. That - - he said they had a voice that impersonated the judge and there was a voice that sounded like his own voice, and that they would speak to him and tell him things and among the things they were telling him was that they were going to kill our children.... At that time, I believe he just referred to them as the people. There was a time when he referred to them as gypsies for a period of several months, and I don't recall actually if on that day he was referring to them as gypsies or not.... He recently told me that they were part of a satanic cult, but he didn't give me a name for the satanic cult, but they've always been - - the leader of the group, when he speaks to me about them, is always Sherral Parris.

Ms. Hutcheson also testified:

He's told me repeatedly and I believe in that conversation also that they rape him and that they sell tickets, they rape him for sport and it happens on an ongoing basis. He's also told me that they - - I think it was in a later conversation, he told me that

they were raping him as early as 2005 when he was living in the house with me, and that I was not aware of it, but that they were coming in and raping him in our house.

Ms. Hutcheson further testified that:

at times, he's asked me if I - - I think in that phone conversation on December 27th, he asked me if I was one of them. At times he thinks I'm one of the people, and he will ask me with very - - a lot of earnestness in his voice, "Are you with them, are you part of them? Please tell me the truth, Katie, are you connected with these people in any way?"

Ms. Hutcheson testified: "at one point [Respondent] thought that other people were withdrawing cash from his account. He also thought that they were writing checks for cash, and he was very concerned that these people, at that time I think he referred to them as gypsies, were stealing money from him." When Ms. Hutcheson suggested that Respondent go to the bank and show them that it was not his signature on the checks:

he said, "Katie, it is my signature." And I didn't say anything. I didn't understand that, and he paused and then he said, "You just don't understand what these people can do."

And it frightened me very much because it makes me think that he - - I don't know what he means by that. I don't know if he does things and then doesn't remember that he did them when clearly he did it if he signed the check and then he thinks that they impersonated him or whatever. It's just - - I find it very disturbing that he - - his signature was on the check, he acknowledges his signature's on the check, but he still thought that they did it.... Because if he, if he thinks that they could withdraw the money with his signature and then he thinks that they are going to kill the children, then it would stand to reason that in this sordid thinking of his, that perhaps he could kill the children and then come back and say they killed the children.

And that's consistent with other things he's done. For instance, one day he showed up and hadn't shaved, at a school event for [our son], and said, "I'm sorry, I couldn't shave. They took my razor." And it seems to me that he, he does things himself, doesn't remember doing it, and then says they did it, and when it gets to the point of him saying that somebody is going to kill the children, it's very frightening to me. That's not anything that I can take lightly, and it's something that I have to take some sort of action on.

Ms. Hutcheson also testified:

[Respondent] called me one night and said he was eating pancakes, and he was sitting on the couch and it was at dinnertime, and the next morning, he said, "You won't believe what they did last night. They poured syrup all over me as I was sleeping on the couch."

Well, seems to me a logical explanation for that would be that he spilled syrup on himself, but then the next day, he thinks that they did it, and it's - - that's what scares me the most.

In March of 2006, Respondent told Ms. Hutcheson that the people led by Sherral Parris and her boyfriend had left messages all over his apartment. Ms. Hutcheson testified:

so I asked him if I could come and see it and he didn't want me to.

I went down there unannounced, and he let me in and showed me what he said were messages, and I, I saw no messages. He showed me numerous examples of what he said were words and all kinds of sexually explicit drawings which I couldn't see, and he said that she had written - - he unrolled an aluminum foil, he unrolled it across the floor, and he said that she had put her entire sexual history there and he was very angry when I couldn't see it. He said there were pictures of men's genitals on there, and - - I'm sorry. Then he would ask me if I could see it and I said no. And he got very angry and then he showed me other things all over the apartment where he said she had written things, and I couldn't see anything.

And I said, "[Respondent], I think you're delusional, I don't see anything."

And he got very angry and he was showing me more and more, and he showed me - - he unrolled a garbage bag and taped it up on the window in the light and said, "Don't you see that? Don't you see it? It says '[Respondent].'"

And I said, "No, I don't see anything." He just pulled it out of the box, how could anything be written on it?

He said, "You just don't understand what she can do."

And then he showed me the back of an American Express bill, and he said it had her entire sexual history written on it and couldn't I see it. And I said, "No, I don't. I don't see anything written on this envelope."

Ms. Hutcheson further testified:

Since that time he has never, he has never gone back on that. He has never said, oh, that's not - - that didn't happen, I know now that was a crazy thing to do. He's

always maintained that she had left messages, that the people come in and write on things. He consistently says that there's words written on all kinds of things since that day. This was just the first incident of, of what I - - the first time I realized how delusional he was.

When asked if she has seen anything that would lead her to believe that Respondent has dealt with these issues, Ms. Hutcheson testified "No. I see evidence that it has gotten worse.... I see no evidence it's gotten better."

Ms. Hutcheson testified about a plumber's panel in Respondent's apartment stating:

there was an opening for the plumber to get to the bathtub because there had been some problem with the plumbing, and [Respondent] thought that people, including his cousin Laura Finch and her boyfriend, were coming through that panel and he told me that he had rigged up a gun and put a metal plate over the panel so that he could kill whoever came through there.

And I said, "[Respondent], what if you kill Laura?" I mean, her son...is both [Respondent's] godson and my godson, we're his godmother and godfather. I said, "What if you killed Laura?" I said, "Think what that would do to [Laura's family]."

He said, "I don't care. Whoever comes through there deserves to be shot."

On another occasion, while Ms. Hutcheson was visiting Respondent's apartment, Respondent insisted that the people had put a camera in an air vent. Ms. Hutcheson looked and then said to Respondent "even if it were a camera, it's only taking a picture of the top two feet of your apartment." Respondent replied: "No, their cameras can turn corners. You just don't understand what they can do." Respondent then showed Ms. Hutcheson:

another air vent in the bedroom where he showed me the hole where he had blown out the camera with a gun. He had gotten a pellet gun from Wal-Mart, he said, and blown a hole in the air vent, and I saw the hole that he had blown in the air vent from the gun.

In the fall of 2007, Respondent called Ms. Hutcheson and told her:

he was on his way to Birmingham to see his lawyers, and I said, "I didn't know you had lawyers in Birmingham."

He said he had six lawyers in Birmingham and that he was on his way there, and he told me that I needed to watch out for the children because his girlfriend, Jackie Slayton - - I guess she was another girlfriend that he assumed I knew about, after Sherral Parris, and said Jackie and Sherral had gotten together and that they

were members of a satanic cult and that they had been raping our children, that they had forced him to have sex with our children. He told me that many, many people had had sex with our children, told me that they had forced him to have sex with his mother. He told me that Sherral's mother was involved and that they had forced her to eat her own feces, and he said that he was very worried about the children and that it had happened when I had taken the children to a party on a farm in Birmingham.

And I said, "[Respondent], I've never been to a party at any farm in Birmingham." He made me promise that I would never go back to the party at the farm in Birmingham, and he made me promise to keep the children, you know, to watch out after the children.

Ms. Hutcheson testified that she is a recovering alcoholic and stated:

I think it's tragic that [Respondent] has relapsed and that he has become in the condition that he is today, but as far as the affairs go, the way I look at it, those affairs would never have happened if he had not relapsed and they're part of the disease.

Denis Kennedy, M.D., a psychiatrist/hospitalist, examined Respondent at the request of Respondent's attorney. Dr. Kennedy met with Respondent in March of 2007 for a psychiatric assessment and then saw Respondent again in April and in July of 2007 for office visits. Dr. Kennedy spent approximately one hour with Respondent during the first visit and approximately fifteen minutes during each of the follow-up visits.

Dr. Kennedy testified: "My initial opinion with regard to competency was that [Respondent] was competent to manage his affairs." Dr. Kennedy also met with Respondent for approximately three hours several days prior to trial and testified: "My refreshed opinion is that [Respondent] is competent currently." Dr. Kennedy testified: "A person can be actively hallucinating and delusional and still very competent for different proceedings. It's not - - it's frequently not an element in competence. Psychosis and competence are separate issues." Dr. Kennedy further testified: "Many people who are delusional are competent."

Respondent testified at trial that he was not under the influence of alcohol or any drugs at that time. He admitted that he had taken cocaine several times after he left Valley approximately eleven months earlier and also since he left Hazelden. Respondent also admitted that "[a]t the worst part of it, probably" he was spending from \$1,000 to \$1,600 per week on cocaine. When asked about an alcohol level of 332, Respondent was quick to correct the questioner by stating: "333," and further stated: "Yeah. Actually, that's the lethal dose. I'm not quite sure that that's what I tested at, but I've tested higher before. When I went into Ridgeview I was a .5, which is over dead." When asked if he needed help, Respondent stated:

I need support. As far as the help goes, I believe I can handle that myself, but more than anything, I need a little bit of peace and some room to breathe in order to try to

address the issues ahead of me, rather than, you know, having to wake up every day and have something - - some new lawsuit slapped in my face or having added worries of, well, frankly you, Mr. North.

Respondent testified:

I've been in trouble for some time now. I mean, I'm an alcoholic and I'm in relapse and I'm not actively pursuing recovery, which is what I've been trying to do. It's very difficult. Since I got back from Hazelden I cannot - - I cannot find motivation or, or the serenity to try to find some way around to address, readdress my sobriety in this current environment that I find myself at odds with my family, having to defend myself. I feel like I've been kicked out on the mat and I've got y'all's feet on my neck, and all I'm trying to do is give me a chance to get up and breathe and, and take another stab at this thing. And yet, all I feel like I'm doing is getting - - just defending myself all day, every day, with my arms over my head, saying, please get off of me.

When asked what was the longest period that he had remained sober since the summer of 2006, Respondent replied that "[i]t would probably coincide with Hazelden and then after, after Hazelden was finished," and when asked if that was because Hazelden was a controlled environment treatment center, Respondent replied "[s]upposedly."

When asked about the gypsies, Respondent testified:

All I know, all I know is that I was - - when I was foolish enough to - - when I was foolish enough to have an affair on my wife and I got mixed up in - - I got mixed up with the wrong crowd of people and I didn't really realize it at the time, but I suppose that, when I moved out of the house, I had a bad habit of trusting people mostly because everybody in my life was trustworthy..

And I didn't - - it had been long since that I had to screen people in such a way as I did when I moved to, to St. John's, and I found myself in an environment of people who were happy, eager to take advantage of someone like me who was trusting, well-funded, and somewhat naive. So I don't know, I guess you could say I fell in with a bad crowd or whatever, not that that - - that sounds awfully naive for somebody in their forties, but that's really kind of what happened.

With regard to Sherral Parris, Respondent testified:

She was at that time, yes, she was - - I mean, she was the one who found me that apartment. She was the one who spent eight months convincing me to move away from my home and all of this other kind of stuff and, you know, plying me with - - you know, yes.

When asked about the people who allegedly wrote on his sofa, Respondent testified:

Yes, years ago. They did a lot, a lot of weird childish things, you know, back there. You know, at St. John's, it was like, it was like open house, you know. I mean, I've got, I've got, on my voice mail - - you know, she mentioned it, you know, my cell phone is how you buzz somebody into the apartment. On my voice mail, I've got people being buzzed into my apartment on my voice mail. Now, I couldn't possibly buzz them into my apartment if it's on my voice mail. I've got Mike Eastman being buzzed into my apartment on two separate occasions on my voice mail, which is not physically possible if I was the one doing it. Okay?

When asked if the people wrote threats on his sofa, Respondent testified:

They - - I don't know what they wrote on my sofa. All I know is that there were - - I'm sitting there one day and there's like - - I mean, I do have photographs of this stuff, it's demonstrated, if I could put my hands to it. I really wish I would be able to produce this for you before this thing is over, and I have been looking, Mr. North. Honest to God, I have. With the exception of having that laptop which is where my whole life was and we now seem to be locked out of, I guess, that's the only place where it was all organized in one spot that I still had access to that was not, you know, subject to, you know, the whims and whatever of the people who were in my home.

When asked if the people had written on his shotgun, Respondent stated: "It certainly seemed to me, yes, that they did.... I don't know what they wrote on there."

Respondent insisted that he did not call the people gypsies, but instead stated: "They're like kids. They're like, they're like teenagers. They're like the, you know, the neighborhood vandals, I guess. I don't know, I really don't." When asked about people writing on his t-shirt, Respondent stated: "It looked like it had been scribbled on as well. I don't know what they wrote." Respondent also testified that he had been written on.

Respondent testified with regard to his cell phone bill stating:

My August bill included a charge for over 1500 text messages that were sent and received by my telephone, 1500 text messages by me and me alone on my phone in one month.

Now, I can assure you that I did not send or receive 1500 text messages in one month, and yet that is what's written down and that is what's recorded on my bill among many other things. Phone calls to Rome, Georgia, city government, a whole lot of others, which I didn't realize were going to be principal to this proceeding, but it's certainly something that is going to be a part of the next one.

Respondent testified:

I was upset with my family because they seemed to have an agenda about me getting better, and when I offered them every concession that they were looking for before they even asked for it, nobody even called me back. Last Christmas, I called and left a message on my wife's answering machine and said I would be happy to go to treatment, long-term treatment if you want, you can drug-test me every day for the next year and if I fail even just one, you can have this conservatorship and I will do whatever you say, okay?

And nobody ever called me back, but three weeks later, the SWAT team showed up in my front yard and hauled me off to Valley involuntarily. That wasn't what I expected from my family. That's not the warm fuzzy feeling I was looking for. It doesn't, it doesn't engender security or serenity or peace or anything that's necessary for you to get sober, and I don't understand how these people who - - you know, you can't swing a dead cat in my family without hitting an alcoholic - - how these healthy people seem to think that it would. It makes no sense to me, and it never - - ...

At that point in his testimony, Respondent was interrupted when the questioner asked: "Showing their concern about you?" Respondent replied:

Well, yeah, but nobody put their arm around me and asked me, you know, let me help you. They sent the SWAT team and when I offered - - when I went begging to them and said, you know, I need some help, I will do this, you know, please just stop cutting me out because I am all alone out here and I've never felt so alone in my life, and when I call them and told them that, nobody called me back.

When asked about whether he told Hazelden that when he started drinking, he stopped working, Respondent testified:

No, that's not true. When I started drinking, it was, it was not - - I mean, I did not just start drinking and, you know, continue to drink. It was binge drinking there, weekends sometimes and fairly haphazard there for about eight months. I never visited a hospital that I recall.

I did drink to the point where I felt sick a number of times, but some - - you know, anybody who knows me knows that I can't hide it when I'm drinking. I mean, as you can probably tell from those tapes, I'm not, I'm not discrete, by any means, and not only that, but usually if I drink for three, maybe four days in a row, then I have to go to the hospital. I mean, that's just a given. I mean, it's a physiological fact about me.

When asked about his car being towed within the past few months, Respondent testified:

Yes, my - - the clutch went out on it on Central Avenue. I live in top of Fortwood which is quite a steep hill, quite a long steep hill, and there was no way that the car was going to pull it when the clutch went out on me when I was driving it and it just wasn't going to pull it, and so I had to leave it on the side of road [sic] down there. I was drinking at that time, it was very - - I mean, it was like days before - - I mean, a day or two maybe, maybe two days before I left to go to Anchor with Eric, and so I was not - - you know, I wasn't drunk at the time when the clutch went out on me. I mean, I shortly thereafter became pretty intoxicated and I just, I didn't go back down there to get it.

The police towed it, which I felt was probably the safer of, you know, any avenue that was available to me. So no, I didn't abandon my car. I knew where my car was. It's not like I had lost it. I walked up the hill with it just down the bottom of the hill from where I live.

Respondent testified:

That's the first step, you know, realizing our life has become unmanageable and that's the, that's - - every alcoholic has to face that. Otherwise they wouldn't be in AA or they wouldn't be, you know, quote-unquote, an alcoholic. I mean, I spent fifteen years - - eighteen years doing nothing but taking care of everybody in this family as well as myself and my wife and my kids and everything else.

And I did everything for everyone, without pay, without, you know, even so much as a thank you, and it was more efficient than probably, you know, you could ever imagine that I would be. Certainly more so than, you know, I ever thought I'd be, but I - - so I have to - - in comparison to that, at a full-time job taking care of them, I was on five boards, I have to say that, yes, if I'm drinking that particular day, probably not as efficient as I could be.

When asked about the incident when he woke one day thinking it was Wednesday and discovered it was really Friday, Respondent testified that he had not been drinking, but felt that he had been involuntarily drugged and stated:

[I]t was the most stark, it was the most stark loss of time that I'd had and it was, it was very clear to me that - - I mean, especially, that was when, you know, I saw that writing and I, I showed that to the gentleman at the emergency room, and I asked him, I said, "What should I do? What do I do?"

I said, you know, I went to sleep on Tuesday night, I remembered that, and I woke up and I thought it was Wednesday for all the while I was going to pay some bill. I was going down to the - - I don't know exactly where and I was driving down, I guess it was MLK, and I hit right over there by the courthouse or by the post office and I saw the barricades up for Nightfall, and I was like what in the world, there must be some sort of parade or something that's going on, because, I mean, I knew it was Wednesday and it was Friday.

And I mean, that really scared me, so - - and I didn't realize until, you know, the next day the full weight of it because, I mean, I just - - whatever, and I became very panicky, very - - you know, it scared me really, really bad. It really scared me.

After trial, the Trial Court entered its detailed and thorough Memorandum Opinion and Order on January 11, 2008 finding and holding, *inter alia*:

On February 9, 2007, the court was asked by the Petitioners to order [Respondent] to submit to an examination by a licensed physician or psychologist. The motion was granted and [Respondent] was ordered to submit himself to an examination by Dr. Terry F. Holmes ("Dr. Holmes"), a psychiatrist.

* * *

During the trial, the court received the expert testimony of Dr. Holmes, Dr. Denis Kennedy ("Dr. Kennedy"), medical records, and testimony and exhibits from several lay witnesses. The court also was provided medical records from Hazelden and Memorial Hospital.

Dr. Holmes testified on behalf of the petitioners. Dr. Holmes' curriculum vitae was introduced as Trial Exhibit 1. Dr. Holmes graduated from Baylor University's College of Medicine in 1974. He entered service with the [United] States Air Force. He has board certifications in aerospace medicine (1978), occupational medicine (1984) and psychiatry (1990). Dr. Holmes has worked at Moccasin Bend Mental Health Institute ("MBMHI") since 1997 and served as the Director of Clinical Services. He also served as Medical Director of the Seniors Program at Erlanger North Hospital for about seven years prior to his relinquishment of that job. Dr. Holmes completed his psychiatric residency at an alcohol recovery center in Washington, D.C. Dr. Holmes testified that approximately two-thirds of the admittees of MBMHI have an alcohol or drug abuse problem.

* * *

During his interview, [Respondent] told Dr. Holmes that he was an alcoholic that got involved with drugs. [Respondent] began drinking at age 8 [or 9]. He was discharged from school at age 14. Dr. Holmes stated that [Respondent] had some

character disorders in addition to addictions. Some symptoms of such character disorders were [Respondent's] blaming others for all of his problems and his failing to take any personal responsibility for his own actions. [Respondent] exhibited elements of disorganization of thinking and persecution during his interview by Dr. Holmes.

Dr. Holmes testified that [Respondent] had deficits in his ability to plan. [Respondent] followed his feelings. He was impulsive. His insight and judgment were impaired. He was persecuted and did not see the world as others saw him. [Respondent] "did not get it that alcohol and drugs can kill him." Dr. Holmes described [Respondent] as anti-social and borderline narcissistic. [Respondent] denied any and all hallucinations. He kept saying, without prompting, that he was not crazy.

Dr. Holmes' findings for [Respondent] were: (1) psychotic disorder due to cocaine use; (2) cognitive disorder - a dementing illness from alcohol abuse; (3) type I alcoholism, and (4) opiate addiction among other findings. Dr. Holmes stated that the prognosis for [Respondent] was very guarded. Dr. Holmes opined that [Respondent] was suffering irreversible brain damage as well as a deteriorating personality disorder due to his continuing abuse of alcohol and other drugs, especially cocaine. Dr. Holmes found that [Respondent's] motivation was defective. Dr. Holmes stated that [Respondent] could not make good decisions while he was intoxicated and that he was intoxicated most of the time. Dr. Holmes stated the "Past behavior is the best example of future performance and behavior."

Dr. Holmes testified that [Respondent] did need a conservator for his person and property. Dr. Holmes viewed [Respondent's] failing to complete the treatment program at Hazelden as a sign of his failure to make progress toward recovery. Dr. Holmes stated that [Respondent's] talk in Trial Exhibit 5 and his treatments at the Emergency Room at Memorial Hospital, including the alcohol levels, presence of other drugs, and yellow skin, indicate the depth of his problem. Dr. Holmes opined that the likelihood of [Respondent] having a relapse was virtually certain. Dr. Holmes did not think [Respondent] could recover on his own.

Dr. Holmes did not question [Respondent's] family's motives in filing the conservatorship petition. He thought they were making the correct decision in pursuing the conservatorship petition.

* * *

Dr. Kennedy saw [Respondent] on March 12, April 16, and July 5, 2007. The first meeting was for close to an hour. The later two visits were for 15 minutes each.

Based upon his testimony, Dr. Kennedy graduated medical school from University College in Dublin, Ireland in 1965. He performed his residency program

in psychiatry in St. Louis, Missouri, from 1966-70. He also served 20 years in the United States Air Force and retired in 1995. He has been in private practice from 1995 until August of 2007. Then, he became employed by Memorial Hospital as a psychiatrist/hospitalist.

Prior to meeting [Respondent], Dr. Kennedy believed the relationship was for a competency exam and a treatment program. As it turned out, only the competency issue was addressed. Dr. Kennedy opined that [Respondent] was competent to make financial and medical decisions as of the March 12, 2007, evaluation.

In addition to the fifteen-minute visits on April 16, 2007, and July 5, 2007, Dr. Kennedy testified that he had observed [Respondent] for approximately three hours "over the last three days," which included the date of his testimony on December 19, 2007. Dr. Kennedy remained of the opinion that [Respondent] was currently competent based upon his observations.

Dr. Kennedy relied upon the records from Valley Hospital of early 2007. [Respondent] had been hospitalized as a result of a petition for involuntary hospitalization filed by family. [Respondent] was released prior to a judicial hearing as a result of the staff's conclusion that [Respondent] did not meet the legal criteria for an involuntary commitment. Dr. Kennedy stated that a person can be actively hallucinating and delusional and still be competent. As to [Respondent's] history, Dr. Kennedy stated that [Respondent] had a strong history of alcohol and other substance abuse, resulting in addiction and dependence.

At the July 5, 2007, meeting, [Respondent] told Dr. Kennedy that he had relapsed. He had been drinking for two weeks before going to Hazelden. He reported that he was told by Hazelden to see a therapist for his sexual abuse issues. Dr. Kennedy testified that [Respondent] seemed very anxious and he broke down when the "alleged" abuse was discussed. Dr. Kennedy thought [Respondent] may be suffering from post traumatic stress disorder. Dr. Kennedy referred [Respondent] to a therapist in his office for psychotherapy regarding the sexual abuse issues. [Respondent] did not see anyone for psychotherapy.

Dr. Kennedy said the tapes, transcribed as Trial Exhibit 5, were consistent with someone intoxicated or impaired from illegal substances. Although Dr. Kennedy was of the opinion that [Respondent] was presently competent, he "may well have been incompetent and not making good judgments" during the time the tapes were made.

On cross-examination, Dr. Kennedy stated that the discussion of 600 rapes was an example of delusional activity. The continual break-ins of [Respondent's] apartment were also said to be a delusion. Dr. Kennedy stated that competency is based on a specific time and that competency can be a fluid situation. He also testified that alcohol and cocaine use can lead to brain damage and a dementing

process. When [Respondent] is drunk or drugged, he has delusions or exaggerated speech. [Respondent] may be incompetent when he is drunk, according to Dr. Kennedy.

[Respondent] was admitted to Hazelden on May 15, 2005. Hazelden's discharge summary, dated June 27, 2007, was introduced as Trial Exhibit 6. A complete set of the remainder of the records from Hazelden was introduced as Trial Exhibit 3. Basically, the record recites that [Respondent] perceived that the sexual abuse issue should be the primary focus for his treatment. He refused medication designed to "loosen his fixation and obsession about the sexual abuse focus and ideation." Trial Exhibit 6 at 1. [Respondent] "[w]anted to emotionally work through the sexual abuse and not have anything alter his feelings and indicated an unwillingness to comply with the directive to take medication." *Id.* After several meetings, it was the consensus of the team "[t]o have [Respondent] referred to a mental illness and chemical dependency program with a greater emphasis on mental health." *Id.* [Respondent] rejected the proposed centers and said he would get help in Chattanooga, Tennessee.

Hazelden's discharge summary, on page 2, contains the following:

Continuing Care Recommendations:

1. Remain abstinent for all mood-altering substances.
2. Attend at least four to seven Alcoholics Anonymous or Narcotics Anonymous meetings a week.
3. Obtain a Twelve Step male recovery sponsor and maintain regular contact [sic] with this person.
4. Develop and maintain contact with a sober support system.
5. Enter and complete a mental health chemical dependency residential program to assist [Respondent] with his mental health issues as well as his chemical dependency and to follow all further recommendations of this program.

Prognosis: [Respondent's] prognosis for continued recovery is poor at the present time due to his failure to accept the extended care treatment process and his nonacceptance of the treatment team's recommendations for his continued care.

Final Chemical Diagnosis:

1. Alcohol dependence with physiological dependence.
2. Benzodiazepine dependence with physiological dependence, sustained full remission.
3. Cocaine dependence with physiological dependence, early full remission.

4. Nicotine dependence with physiological dependence.
5. Opioid dependence with physiological dependence, sustained full remission.

Final Mental Health Diagnosis: Posttraumatic stress disorder (PTSD), delayed onset, provisional.

There was no evidence that [Respondent] had complied with any of the recommendations made in Hazelden's discharge summary. He feels like he can recover his way if everyone would leave him alone. However, he has failed to recover on his own during the last three years or so. The court did not see any note in the Hazelden record that [Respondent's] family was toxic for him. The court noted that Eric Hutcheson drove [Respondent] to a treatment facility in Atlanta. One brother also served as the driver during [Respondent's] treatment at Memorial Hospital's emergency room on September 4, 2007.

Medical records from Memorial Hospital were introduced as Trial Exhibit 4. These records were copies of emergency room records made as a result of [Respondent's] visits on August 16, 2007, September 4, 2007, and September 22, 2007.

On August 16, 2007, [Respondent] went to the emergency room at 11:00 a.m. The records, perhaps based on earlier records, indicate his employer as Brooks, Montague & Associates, Inc. and the emergency contacts as his wife and mother. Based upon the urine drug screen, [Respondent] had an alcohol level of 203. An alcohol level above 80 is legally intoxicated and above 400 can be lethal, according to the notes bates stamped Memorial 0036. A chest x-ray and an EKG exam were performed due to [Respondent's] complaints of chest pain. [Respondent] reported (at 11:29 a.m.) That he had been drinking for 2 weeks and had his last drink, vodka, about one and one-half hours before the interview. [Respondent] said he drinks, usually vodka, to relieve his back pain. The final diagnosis was alcohol withdrawal and polysubstance abuse. [Respondent] refused the hospital staff's recommendation that he go to CADAS, a local drug and alcohol treatment center.

[Respondent] returned to Memorial's emergency room on September 4, 2007. [Respondent] reported he had been drinking for days and using drugs. It was noted that his skin color was yellow. One of [Respondent's] brothers was with him as a driver. The alcohol level, based upon the urine drug screen performed, was 333.

The last emergency room record was dated September 22, 2007. On this visit, [Respondent] was "triaged" at 4:18 p.m. His complaint was that he was raped about 2 a.m. on Wednesday. He wanted to be tested for rohibanol, a so-called date-rape medication. The records recite that he was unconscious from Tuesday to Friday. The hospital staff told [Respondent] that the police had to be notified. [Respondent]

did not want to file a report and refused to remain for a police officer to interview him.

Attorney Fielding Atchley served as [Respondent's] guardian ad litem. Mr. Atchley thought that [Respondent] needed a conservator. Mr. Atchley described some of [Respondent's] unusual behavior, such as setting up a gun to shoot any intruder at his apartment at St. John. He also described [Respondent's] taking cash withdrawals, which was an easy way to buy cocaine and alcohol. Mr. Atchley found no support for [Respondent's] belief that someone else was making ATM withdrawals from his account. [Respondent's] inability to control his substance abuse problems cost him his employment in 2005 and has, evidently, prevented him from gaining other employment.

Katie Hutcheson is [Respondent's] spouse. They have two children.

* * *

Ms. Hutcheson testified that [Respondent] called her on December 27, 2006. He said he had heard Sherral Parris and others talking. They were going to kill our children. He was hearing numerous voices. He sometimes called "these people" by the term "gypsies." They were part of a satanic cult. [Respondent] reported to his wife that the gypsies had raped him for sport.

Although [Respondent] was said to love his children very much, he went over a month without seeing them. He failed to meet the children at Rock City once because he had to bail his friend from jail. Ms. Hutcheson said [Respondent] had no Christmas gifts for the children in 2006. He had gone out late on December 24th to purchase gifts and learned that all the stores were closed after 10:00 p.m. He also did not attend [his son's] last birthday. He did not attend his daughter's soccer games in 2007.

Her telephone service was suspended twice due to [Respondent's] failure to pay the bill. Likewise, the Blue Cross Blue Shield health insurance coverage was interrupted due to non-payment. [Respondent] has made only one child support payment on time. The parties disagreed as to what day of the month is the due date. Neither party submitted a copy of the order as an exhibit. Katie Hutcheson said she learned that [Respondent] did not file a joint federal income tax return in 2005. She filed her own separate return for 2006.

Once [Respondent] called Ms. Hutcheson to come to his apartment. He said Sherral Parris and her boyfriend had left messages all over his apartment. Despite his pointing out the words, messages and drawings, Ms. Hutcheson could see nothing. Supposedly Ms. Parris' entire sexual history was on a piece of aluminum foil and then on an envelope. Still, Ms. Hutcheson was unable to see such a history on either the foil or the envelope. [Respondent] said Ms. Parris and others made him

have sex with his mother while Ms. Parris and another girlfriend had sex with his children. Ms. Hutcheson failed to detect the picture, on [Respondent's] cellphone, of the 30 women raping him. All she saw was pictures of his ceiling.

The court was most impressed by Katie Hutcheson. She testified that she is an addict in remission. Although hurt, she was not angry at her husband's adultery. She said his actions were the result of his intoxication. She told him he could come home if he were sober for 3 months. The court believes her testimony and fear the [Respondent], when delusional, could possibly respond to the voices to hurt his own children. It appears that her actions in the divorce case and testimony in this case would suggest that she still loves [Respondent] and would "take him back" if he would become and stay sober. [Respondent] probably has not considered the likelihood that one or both of his children will grow up to be just like him unless he regains his sobriety and becomes an active, positive father for his children.

[Respondent] was called as a witness by the petitioners' attorney. [Respondent] admitted that he had cocaine in his system when he was admitted to Valley Hospital in late January, 2007. He has used cocaine at least a couple of times since his return from Hazelden. He has used crack. [Respondent] said his alcohol level was 500 when he was admitted to Ridgeview. When petitioners' counsel questioned [Respondent] about testing 332 at Memorial Hospital, [Respondent] corrected him and said the level was 333.

[Respondent] said he would have to go to the hospital if he drank for three-to-four days. He cannot "detox" unless he goes to the hospital. He said he felt guilty for not taking care of his kids and cheating on his wife. He feels alone and alienated. Yet he pushes away his family because they are trying to help him. [Respondent] says his apartment is broken into all the time. A gun was stolen. His tax returns and financial records are missing. He went to sleep one Tuesday night and woke up on the Friday.

[Respondent] was upset that Dr. Dong, at Hazelden, asked him "what evidence do you have to support the rapes." At trial, [Respondent] testified that the staff at Hazelden said he should avoid his family because they were toxic. This statement is inconsistent with Hazelden's Discharge/Transfer Summary, Bates-stamped Hazelden 003, on June 8, 2007, that "Strengths identified in [Respondent's] treatment that would be supportive of his ongoing efforts in recovery include: Support of family members and previous knowledge and information regarding recovery." Trial Exhibit 3.

[Respondent] believes he can recover if he just has peace, quiet, and room to breathe. He blames the conservatorship lawsuit for his problems. However, he admitted that he was not actively pursuing recovery. He could not find the motivation to do so. His longest sober period, in the last three years, was while he was in inpatient treatment at Hazelden. While he was at Hazelden, [Respondent] said his

sexual abuse issues reemerged. He needed treatment for sexual abuse, not A & D. So, he left Hazelden and came home. He has not pursued treatment after he returned to Chattanooga.

[Respondent] claims he has spent \$250,00.00 [sic] total per year for the last seven years. This money covers support of his family, and his drug habit. [Respondent] has much money; however, at his spending rate, the balance will not last very long.

* * *

The court finds that [Respondent] suffers from mental illness. Dr. Kennedy testified that alcoholism and drug addiction are classified as types of mental illnesses. Therefore, [Respondent] clearly meets that part of the definition of disabled person as one having mental illness.

Does he need assistance by the court? The court holds that [Respondent] does need assistance of the court. He has not been financially responsible in paying some of his bills when due. Insurance coverage was suspended and telephone service to the family home was discontinued twice due to non-payment of bills. This conclusion may, or may not, be bolstered by Ms. Hutcheson's testimony that [Respondent] has only made one child support payment on time. He left his automobile on the side of the highway. [Respondent] accesses cash from his account by ATM use. He has believed that others have taken funds from his account through ATM withdrawals. He can use [and had used] cash for the purchase of cocaine without any accountability. He has been without employment for almost three years. He evidently did not file his 2005 income tax return and may not have filed his 2006. The 2007 federal income tax return will due [sic] within months. There is always the chance that he could give away a substantial sum of money while delusional or in an effort to retain funds with which to purchase alcohol and cocaine.

The court is not convinced that [Respondent] will be able to recover on his own based upon the events of the past three years. He not only mentioned his addictions but stated that he was not presently motivated to recover. [Respondent's] father died at age 47 of liver disease, evidently caused by his own alcoholism. [Respondent] was 11 years old when his father died. [Respondent] and his own children are fast approaching those ages. Will history repeat itself? Only [Respondent] can alter history in this specific regard. Although a conservator of the person will have difficulty making [Respondent] do anything to recover, if [Respondent] does not want to recover, perhaps that person can be of some assistance to aid him in recovery. The conservator can be a support person.

The court has found, by clear and convincing evidence, that [Respondent] is disabled and needs the assistance of the court. Because of such, [Respondent] needs conservators to assist him. At the hearing [Respondent] would not give the name of

anyone he would want as a conservator. [Respondent's] family does not want to alienate [Respondent] any further. Therefore, the court has selected SunTrust Bank as conservator of [Respondent's] property. [Respondent's] accounts and the various family trusts are handled by SunTrust Bank. The bank can easily handle the funds and payment of [Respondent's] financial obligations. The court also appoints Fielding H. Atchley, Jr. as conservator of the person of [Respondent]. Mr. Atchley is already familiar with the basic facts of the case and his appointment would save the expense of someone becoming familiar with [Respondent] and the facts. Also, Mr. Atchley, by education, training and experience, could assist [Respondent] in obtaining the necessary help, if [Respondent] would agree to such help.

The court hopes that [Respondent] uses the opportunity afforded him to seek the necessary help to recover from his addictions. His family wants him to succeed. His children need him as a positive part of their lives. The court would relish a future order dissolving this conservatorship order. The Circuit Court Judge presiding over the divorce case would be happy to dismiss the pending divorce case. [Respondent] must admit his addictions and determine that he is going to recover. Denial by him and by others associated with him must be disregarded. The court did not consider Dr. Holmes' testimony to be mean spirited; however, his diagnosis was more complete and his prognosis was harsh. Yet, it appears to be true. [Respondent] "has not got it yet" and only he can "get it."

The court wants [Respondent] to retain the right to vote and to drive. He should be able to live in his present apartment, unless it is in his best interest to move elsewhere. Except for trying to eliminate his ability to purchase drugs and alcohol, the court hopes he can lead a normal, sober life. He alone can determine those parameters and the meaning of such.

Respondent appeals to this Court.

Discussion

Although not stated exactly as such, Respondent raises two issues on appeal: 1) whether the Trial Court erred in finding Respondent disabled and in need of assistance and, as a result of this finding, appointing both a conservator of the person and a conservator of the property; and, 2) whether the Trial Court erred by not adopting less restrictive provisions for the conservatorship.

This Court discussed conservatorship proceedings in the case of *In re: Conservatorship of Groves*, stating:

Because of the value our society places on individual autonomy and self-determination, persons seeking the appointment of a conservator must prove by clear and convincing evidence that the person for whom a conservator is sought is a "disabled person." Tenn. Code Ann. § 34-1-126 (2001). This heightened standard

of proof eliminates all serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence. *Walton v. Young*, 950 S.W.2d 956, 960 (Tenn. 1997); *Ray v. Ray*, 83 S.W.3d 726, 733 (Tenn. Ct. App. 2001). Evidence satisfying this standard will produce in the fact-finder's mind a firm belief or conviction regarding the truth of the factual propositions sought to be established by the evidence. *Fruge v. Doe*, 952 S.W.2d 408, 412 n.2 (Tenn. 1997); *O'Daniel v. Messier*, 905 S.W.2d 182, 188 (Tenn. Ct. App. 1995).

* * *

The appointment of conservators in Tennessee no longer hinges on a determination of incompetency. For the past ten years, conservatorship proceedings have focused on the capacity of the person for whom a conservator is sought. Conservators may now be appointed only for persons who are disabled.

* * *

As the law now stands, the threshold question in every conservatorship proceeding is whether the person for whom a conservator is sought is disabled or incapacitated. If the answer is no, the trial court cannot appoint a conservator. If, however, the answer is yes, the court must then determine whether the person is fully or partially incapacitated and whether the incapacity is temporary or permanent. The trial court must also determine, based on the nature of the incapacity, whether the disabled person requires full-time supervision, protection, or assistance or whether partial supervision, protection, or assistance will suffice. If the trial court determines that the disabled person requires any sort of supervision, protection or assistance, it must enter an order appointing a conservator and must specifically "[e]numerate the powers removed from the respondent and vested in the conservator." Tenn. Code Ann. § 34-3-107(2). Any power not specifically vested in the conservator remains with the person for whom the conservator has been appointed.

* * *

Tennessee's conservatorship statutes do not define the concept of incapacity and do not identify any particular illnesses or conditions deemed to be disabling or incapacitating. The definition of "disabled person" alludes in the most general terms to "mental illness, physical illness, developmental disability or other mental or physical incapacity." Thus, while identification of the disabling illness, injury, or condition is an important part of a conservatorship proceeding, the pivotal inquiry involves not merely the diagnosis but also the effect that the illness, injury, or condition has had on the capacity of the person for whom a conservator is sought.

In re: Conservatorship of Groves, 109 S.W.3d 317, 330-31 (Tenn. Ct. App. 2003) (footnotes omitted). As pertinent to this appeal, Tenn. Code Ann. § 34-1-126 provides:

34-1-126. Finding of disablement and need of assistance prerequisite for appointment of fiduciary. – The court must find by clear and convincing evidence that the respondent is fully or partially disabled and that the respondent is in need of assistance from the court before a fiduciary can be appointed.

Tenn. Code Ann. § 34-1-126 (2007). With regard to the definition of the word ‘disabled,’ the statutory scheme provides:

“Disabled person” means any person eighteen (18) years of age or older determined by the court to be in need of partial or full supervision, protection and assistance by reason of mental illness, physical illness or injury, developmental disability or other mental or physical incapacity;

Tenn. Code Ann. § 34-1-101(7) (2007).

This Court has discussed the clear and convincing standard in a conservatorship case stating:

The “clear and convincing evidence” standard defies precise definition. *Majors v. Smith*, 776 S.W.2d 538, 540 (Tenn. Ct. App. 1989). While it is more exacting than the preponderance of the evidence standard, *Santosky v. Kramer*, 455 U.S. 745 at 766, 102 S. Ct. 1388 at 1401, 71 L. Ed. 2d 599; *Rentenbach Eng’g Co. v. General Realty Ltd.*, 707 S.W.2d 524, 527 (Tenn. Ct. App. 1985), it does not require such certainty as the beyond a reasonable doubt standard. *Brandon v. Wright*, 838 S.W.2d 532, 536 (Tenn. Ct. App. 1992); *State v. Groves*, 735 S.W.2d 843, 846 (Tenn. Crim. App. 1987).

Clear and convincing evidence eliminates any serious or substantial doubt concerning the correctness of the conclusions to be drawn from the evidence. *See Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901 n.3 (Tenn. 1992). It should produce in the fact-finder’s mind a firm belief or conviction with regard to the truth of the allegations sought to be established. *In re Estate of Armstrong*, 859 S.W.2d 323, 328 (Tenn. Ct. App. 1993); *Brandon v. Wright*, 838 S.W.2d at 536; *Wiltcher v. Bradley*, 708 S.W.2d 407, 411 (Tenn. Ct. App. 1985).

In re: Conservatorship of Davenport, No. E2004-01505-COA-R3-CV, 2005 Tenn. App. LEXIS 821 (Tenn. Ct. App. Dec. 27, 2005), *no appl. perm. appeal filed* (quoting *O’Daniel v. Messier*, 905 S.W.2d 182, 188 (Tenn. Ct. App. 1995)).

As discussed fully above, the Trial Court found by clear and convincing evidence that Respondent was a disabled person and in need of assistance from the court. The evidence in the record does not preponderate against the Trial Court’s findings made under the clear and convincing evidence standard. The Trial Court observed the witnesses, made credibility determinations, and thoroughly documented its findings. “When a trial court has seen and heard witnesses, especially

where issues of credibility and weight of oral testimony are involved, considerable deference must be accorded to the trial court's factual findings.” *Seals v. England/Corsair Upholstery Mfg. Co.*, 984 S.W.2d 912, 915 (Tenn. 1999) (quoting *Collins v. Howmet Corp.*, 970 S.W.2d 941, 943 (Tenn.1998)). Contrary to Respondent’s argument, the Trial Court did not appoint the conservators because the Trial Court did not approve of Respondent’s “choice of lifestyles.” Rather, the Trial Court appointed the conservators because the Trial Court found by clear and convincing evidence that Respondent was disabled and in need of assistance from the court. Given the evidence in the record on appeal, we find no error in the Trial Court’s decision to appoint a conservator both for Respondent’s person and for Respondent’s property.

We next consider whether the Trial Court erred by not adopting less restrictive provisions for the conservatorship. As pertinent to this issue, Tenn. Code Ann. § 34-1-127 provides:

34-1-127. Least restrictive alternative to be imposed. – The court has an affirmative duty to ascertain and impose the least restrictive alternatives upon the disabled person that are consistent with adequate protection of the disabled person and the disabled person’s property.

Tenn. Code Ann. § 34-1-127 (2007).

Respondent argues on appeal that the Trial Court erred because it did not adopt the Proposed Property Management Plan submitted by Respondent. The Trial Court entered an Order on April 1, 2008 finding and holding:

[Respondent], through counsel, filed a Property Management Plan in this cause. The Property Management Plan is supposed to be filed by the conservator of the property, *i.e.*, SunTrust Bank. Tennessee Code Annotated § 34-1-110. Therefore, [Respondent’s] Motion for the court to act on his Proposed Property Management Plan is based upon a misunderstanding. However, the filing of [Respondent’s] plan has been helpful to SunTrust Bank’s drafting its own Property Management Plan.

With regard to this issue, Tenn. Code Ann. § 34-1-101 provides:

(15) “Property management plan” means the plan submitted by the fiduciary for the investment and management of the property of a minor or disabled person;

Tenn. Code Ann. § 34-1-101(15) (2007). As the statute clearly states, the property management plan is to be submitted by the fiduciary.

While Respondent argues on appeal that some less restrictive provisions for the conservatorship could have been implemented by the Trial Court, Respondent is unable to direct us to anything in the record that shows less restrictive alternatives that could be imposed upon Respondent that would provide for adequate protection of his person and his property. The evidence does not preponderate against the Trial Court’s findings and ultimate determination that these were

the least restrictive alternatives available to protect Respondent's person and property. We find no error in the Trial Court's holdings relative to this issue.

Conclusion

The judgment of the Trial Court is affirmed and this cause is remanded to the Trial Court for collection of the costs below. The costs on appeal are assessed against the Appellant, Thomas R. Hutcheson, and his surety.

D. MICHAEL SWINEY, JUDGE